IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10475 OF 2004

Indumati Khushalchand Shah ... Petitioner

V/s.

Ramavadh Baliraj Mourya ... Respondent

Mr.Rupvate for Petitioner
Ms.Gauri Godse for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 28, 2005**

P.C.:

. The petition challenges the concurrent findings of fact of both the Courts below. The suit was filed by the respondent for recovery of the suit premises on the grounds (i) that the Petitioner had defaulted in payment of rent and (ii) that she had erected a permanent structure without his consent. The trial Court has considered the report of the Commissioner appointed to assess whether the Petitioner had carried out permanent alterations. The Commissioner's report clearly states that the construction carried out by the Petitioner fell within the meaning of permanent construction. Admittedly, this construction has been undertaken by the Petitioner without prior permission of the respondent-landlord. The trial Court has also observed

that the defendant i.e., the Petitioner herein has not taken any exception to the report of the Commissioner and has, thereby admitted that the construction was carried out. It is the contention of the respondent-landlord that while carrying out the alterations due to the road level being increased, the Petitioner had in fact demolished the suit structure and rebuilt the same. While doing so, she had also divided one of the suit galas into two rooms. These findings have been confirmed by the appellate Court and I see no reason to interfere with the same.

2. Reliance placed by the Petitioner on the judgment of the Supreme Court in the case of *Waryam Singh v/s. Baldev Singh,* **(2003) 1 SCC 59** does not take the case of the Petitioner any further in view of the fact that the Petitioner has carried out alterations, which amount to permanent erections and they are made in breach of the Act.

3. On the question of arrears of rent, observations have been made by the trial Court that the plaintiff’s pleadings in respect of the arrears of rent indicate that the defendants were not in arrears of rent. The Appellate Court has, however, found that there has been a default in payment of rent by the Petitioner. The

findings of the Appellate Court in this regard cannot be faulted.

4. Petition is dismissed.

5. The Petitioner requests for some time to vacate the suit premises. In the circumstances, the time to vacate the premises is granted upto 31.12.2005. However, the Petitioner and all the adult members in her family shall furnish an undertaking in the usual terms to vacate the premises by 31.12.2005. The undertaking shall be filed within two weeks from today.